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AD HOC COMMITTEE ON THE ELABORATION
OF AN INTERNATIONAL CONVENTION
DEALING WITH THE SAFETY AND
SECURITY OF UNITED NATIONS AND
ASSOCIATED PERSONNEL
New York, 28 March-8 April 1994
Agenda item 5

ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Note by the Secretary-General

I. INTRODUCTION

1. On 9 December 1993, the General Assembly adopted resolution 48/37 entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice".

2. In that resolution, the Assembly recalled the statement made by the President of the Security Council on behalf of the Council, on 31 March 1993, in which the Council, inter alia, recognized the need for all relevant bodies of the Organization to take concerted action to enhance the safety and security of United Nations forces and personnel. 1/

3. Having expressed grave concern at the increasing number of attacks on United Nations personnel that have caused death or serious injury, the General Assembly decided to establish an ad hoc committee to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel. Under paragraph 2 of resolution 48/37, the Ad Hoc Committee is asked to prepare the text of a draft convention, taking into account any suggestions

and proposals from States, as well as comments and suggestions that the Secretary-General may wish to provide on the subject, and bearing in mind views expressed during the debate on this item at the forty-eighth session of the General Assembly. The present observations are submitted pursuant to paragraph 2 of resolution 48/37.

II. GENERAL OBSERVATIONS

4. The Secretary-General personally attaches great importance to the safety and security of United Nations personnel. He has on several occasions made it clear to Member States that, unless the safety and security of United Nations personnel is ensured, the Organization will not be able to implement missions entrusted to it by Member States successfully. In a note submitted to the forty-eighth session of the General Assembly on this subject, the Secretary-General pointed out, that in the fulfilment of the responsibilities assigned to them by Member States, United Nations personnel are often called upon to perform their functions under extremely hazardous security conditions, where decisions regarding their safety assume an immediacy not encountered in other situations. As a consequence, whereas, in the past, working under the banner of the United Nations has provided its personnel with safe passage and an unwritten guarantee of protection, this is no longer the case, and such personnel are often at risk simply by virtue of their affiliation with organizations of the United Nations system. 2/ Against this background, the Secretary-General has repeatedly stated that he will continue to do his utmost to ensure the safety and security of United Nations personnel.

5. It is a matter of deep regret that, despite all efforts, attacks on United Nations and associated personnel have increased in the last two to three years. In this connection, the Secretary-General would like to bring to the attention of Member States some statistics relating to attacks against personnel of the organizations of the United Nations system in 1992-1993. There were 33 fatalities in the 24-month period from 1 January 1992 to 31 December 1993. Of the 33 staff members concerned, 16 were killed in areas where no government authorities existed de facto or where such authorities were unable to maintain order and hence to discharge their responsibilities by protecting persons within their jurisdiction. Reference is made to fatalities in Somalia (3), southern Sudan (2), Afghanistan (4), Angola (5) and Bosnia Herzegovina (2). Of the 33 staff members referred to above, 29 suffered gunshot wounds, and there are grounds to believe that at least 6 were deliberately executed. More than half of those who lost their lives were engaged in providing humanitarian assistance.

6. The number of fatalities among United Nations military contingents has also dramatically increased during the past two years. While the grand total for all past and ongoing missions amounts to 1,074 fatalities, in 1993 alone 202 military personnel were killed.

7. The Secretary-General would like to express his appreciation to the Government of New Zealand for its timely initiative of inscribing on the agenda of the General Assembly an item intended to enhance the safety and security of staff by making it possible to hold personally responsible those who attack or commit other acts of violence against United Nations and associated

personnel. 3/ The Secretary-General is also grateful to the Governments of New Zealand and Ukraine for submitting concrete, although differently oriented, proposals concerning matters to be addressed in the elaboration of a new convention. The Secretary-General would also like to thank all representatives who spoke during the forty-eighth session of the General Assembly under this item in support of the adoption of additional measures aimed at enhancing the safety and security of United Nations and associated personnel.

III. CONVENTION ON THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

8. As noted above, the General Assembly by its resolution 48/37 asked the Ad Hoc Committee to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel. Thus, the Assembly has made it clear that the subject-matter of the future convention should not be limited to the issue of responsibility for attacks on the said personnel, and it has mandated the Committee to broaden the approach reflected in the draft submitted by New Zealand 4/ by giving consideration to other ideas, including those contained in the draft put forward by Ukraine. 5/

9. Safety and security of the Organization and its personnel depend on two factors. Firstly, it depends on the ability and willingness of Governments and other authorities of countries hosting United Nations operations to meet their responsibilities and obligations for ensuring the safety and security of United Nations personnel. Secondly, it requires recognition by all those concerned of the impartial and international nature of United Nations operations, and of the fact that, in order to be able to fulfil its assignments successfully, the Organization and its personnel should enjoy the necessary privileges and immunities, including the right to have adequate communication and travel facilities.

10. Recent developments have demonstrated that the Organization has been increasingly mandated by its principal organs, mostly by the Security Council, to undertake multidimensional operations. Safety and security aspects acquire particular importance in such operations. Therefore, in the Secretary-General's view, a new convention should primarily address the problems encountered in the framework of these operations.

11. As regards the possible basis for the elaboration of a convention on the safety and security of personnel involved in United Nations operations, the Secretary-General would like to draw the attention of Member States to paragraph 34 of his report 6/ of 27 August 1993 on the security of United Nations operations, where it is pointed out that a new international instrument should codify and further develop customary international law as reflected in the recent practice of the United Nations and Member States and should consolidate the set of principles and obligations contained in current multilateral and bilateral treaties. It is further stated that, in drawing up such an instrument, consideration could be given to extending some of the privileges and immunities presently enjoyed by the Organization and its personnel to civilian contractors and non-governmental organizations (NGOs) and

their personnel who are engaged in United Nations operations through contractual or other arrangements.

12. It is worth mentioning in this regard that, having examined that report, the Security Council, in its resolution 868 (1993) of 29 September 1993,decided that the safety and security arrangements undertaken by the United Nations or the host country should extend to all persons engaged in operations authorized by the Council. Under resolution 868 (1993), the report of the Secretary-General on any new operation contemplated by the Council must therefore identify all categories of persons including, if necessary, staff of NGOs and civilian contractors to be engaged in the new operation.

13. The Secretary-General suggests that, if Member States share his view that a convention on the safety and security of United Nations and associated personnel should incorporate the set of principles and obligations contained in current multilateral and bilateral treaties and codify customary international law as reflected in the recent practice of the United Nations and Member States, then it would logically follow that, in drafting the proposed convention, existing status-of-forces agreements should be used as examples.

14. The text of the model status-of-forces agreement contained in the report of the Secretary-General dated 9 October 1990 7/ was prepared on the basis of established practice, taking into account earlier and existing agreements. Its provisions have been reaffirmed and further developed in almost a dozen bilateral agreements concluded by the United Nations with Member States in the last three years. The model text has been successfully used as a basis for the elaboration of agreements covering various types of operations undertaken by the United Nations, including operations involving no military personnel. The conclusion on 14 December 1993 of the "Agreement between the United Nations and the Government of the Republic of South Africa concerning the Legal Status, Privileges and Immunities of the United Nations Observer Mission and its Personnel in South Africa" may be mentioned as one of the most recent examples in this regard.

15. With specific reference to the New Zealand proposal, it should be borne in mind that the model status-of-forces agreement provides that the Government of a country hosting a United Nations operation undertakes to respect the exclusively international nature of that operation and to ensure the prosecution of persons subject to its criminal jurisdiction who are accused of acts in relation to the United Nations operation or its members which, if committed in relation to the forces of the Government, would have rendered such acts liable to prosecution. 7/

16. If it is decided that the proposed convention on the safety and security of United Nations and associated personnel should be based on the provisions of the model status-of-forces agreement the contents of that model agreement could be used as a framework with the appropriate additions being made for new provisions on "Obligations of Governments hosting United Nations operations" and "Measures to ensure prosecution or extradition of persons involved in attacks on United Nations and associated personnel".

IV. RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL

17. It was pointed out in paragraph 3 of the Secretary-General's report of 27 August 1993 on the security of United Nations operations that "as is the case with other activities carried out by organizations of the United Nations system, United Nations forces and other operations mandated by the Security Council are normally deployed only with the consent of the host Government and, as appropriate, with undertakings of cooperation by other parties". 6/ This notwithstanding, the number of cases of attacks on United Nations and associated personnel engaged in such operations has recently increased. The situation has become so serious as to be brought to the attention of the Security Council on a number of occasions. As a result, by its resolution 868 (1993) the Council confirmed that attacks and use of force against persons engaged in a United Nations operation authorized by the Council would be considered interference with the exercise of the responsibilities of the Council and might require the Council to consider measures it deems appropriate.

18. The Secretary-General strongly believes that the time has come to provide in a multilateral instrument, as proposed by New Zealand, that persons who attack United Nations personnel or who order the commission of such attacks are individually responsible and will not be able to avoid justice by leaving the territory of the country where they committed such crimes. Such a step, whether it materializes in a separate instrument or as part of a general convention on the safety and security of United Nations and associated personnel, would significantly contribute to the progressive development of international law and send a strong message to potential offenders.

19. At the same time, the adoption of a new instrument, while usefully highlighting the aspect of individual responsibility for attacks on United Nations personnel, should not cast any doubt on existing obligations of Member States. Under international law, the host Government and its authorities are already responsible for the safety and security of United Nations personnel and for the prosecution of the perpetrators of attacks on United Nations staff. This responsibility flows from every Government's normal and inherent function of maintaining order and protecting persons within its jurisdiction.

20. The Secretary-General finally wishes to point out that, in elaborating the provisions of an international instrument concerning responsibility for attacks on United Nations and associated personnel, several important issues will require very careful consideration.

21. One such issue relates to the fact that attacks on United Nations personnel are most likely to take place in contexts where Government control is limited. It should be stressed that the Organization is called upon more and more frequently to operate in areas where there is no government authority. In such contexts, the Organization, in order to contain the situation and to be able to continue with the discharge of its mandate, is often compelled, and may even be instructed by its principal organs, to come to terms with the perpetrators of attacks against its personnel. The question arises how those conflicting concerns could be accommodated in the proposed convention.

22. Another issue relates to enforcement measures under Article 42 of the Charter of the United Nations. The question arises whether attacks on United Nations military contingents engaged in an enforcement operation should be considered, for the purposes of such a convention, as an attack on United Nations personnel.

23. The Secretary-General trusts that the foregoing information, comments and suggestions will be useful to the consideration of this question and reserves the right to submit further comments on specific provisions of the drafts before the Ad Hoc Committee at a later stage.

Notes

1/ S/25493.

2/ A/C.5/48/5, para. 5.

3/ A/48/144.

4/ A/C.6/48/L.2.

5/ A/C.6/48/L.3.

6/ A/48/349.

7/ A/48/594.